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Summary record of the 916th meeting
Held at Headquarters, New York, on Wednesday, 30 June 2010, at 3 p.m.

Chairperson: Ms. Sabo (Vice-Chairperson) (Canada)

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The meeting was called to order at 3.15 p.m.

Possible future work in the area of security interests (*continued*)

1. **Mr. Bazinas** (International Trade Law Division, Office of Legal Affairs) read out an oral report on intellectual property licensing:

> "1. The Commission next considered the topic of intellectual property licensing, a topic at the intersection of intellectual property and contract law. It was widely felt that the Commission did not have sufficient information to make a decision as to the desirability and feasibility of any work on that topic. The Commission, therefore, considered whether to request the Secretariat to prepare a desirability and feasibility study that would identify any concrete needs and suggest specific ways in which they could be addressed by a legal text to be prepared by the Commission with a view to removing any legal obstacles to intellectual property licensing practices hindering the development of international trade.
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> 2. Differing views were expressed as to whether the topic of intellectual property licensing fell within the mandate of the Commission and, as a result, whether the Commission could undertake any work on that topic. One view was that, to the extent that intellectual property licensing involved contract issues and formed an important part of international trade, it was within the mandate of the Commission. Another view was that intellectual property licensing was a purely intellectual property law topic that fell within the scope of work of other organizations, such as WIPO. After discussion, the Commission agreed that intellectual property licensing was an issue at the intersection of intellectual property and commercial law and thus, while it fell within the mandate of the Commission, any work by the Commission should be undertaken in cooperation with other organizations, such as WIPO.
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> 3. Differing views were also expressed as to the scope of any study to be prepared by the Secretariat. One view was that the study should examine the desirability and feasibility of work on various issues related to intellectual property licensing. It was stated that the outcome of the study should not be prejudged. In that connection, it was observed that the result of the study could well be that work was both necessary and possible on a narrow topic or on no topic at all. In addition, it was pointed out that the Secretariat had experience in the preparation of such studies in the context of a careful, open and considerate process, involving expert group meetings, colloquia and seminars, and had every reason to have confidence that that process would produce the best possible and broadly acceptable result for consideration by the Commission. Moreover, it was said that, as the study would have to be prepared within existing resources and other work had priority, the Secretariat would probably need to take some time to prepare it.
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> 4. Another view was that the study should examine a narrow topic related with secured transactions, such as, for example, whether licensee rights could be used as security for credit and if so, in which rights exactly and under which conditions. It was stated that, in the absence of any specific indication of a concrete need, no work was warranted of a broader scope. It was also observed that experience gained from work on intellectual property licensing at the national level suggested that such work was not desirable or feasible. In that connection, it was emphasized that issues arising with respect to patent licensing were different from those arising with respect to copyright licensing. It was also pointed out that even within the area of copyright licensing, the issues arising with respect to software licensing were different from those arising in the context of movie or music licensing. In addition, it was said that difficulties would be compounded at the international level in view of the wide divergences existing among the various legal systems. Some doubt was expressed as to whether that topic warranted any future work in particular in view of the work done by the Commission in the draft Supplement.
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> 5. After discussion, the Commission requested the Secretariat to prepare a study, within existing resources, that would identify specific topics and discuss the desirability and feasibility of the Commission preparing a legal text with a view to removing specific obstacles to international trade

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in the context of intellectual property licensing practices. It was widely felt that the study should establish the concrete needs and appropriate ways in which these needs could be addressed by a legal text to be prepared by the Commission. The study should also carefully identify the suitability and the scope of work to facilitate consideration of the topic by the Commission at a future session. It was also agreed that the Secretariat should consult with experts who had significant experience in intellectual property licensing, both from the public and the private sector, including relevant international organizations, such as WIPO, and consider addressing a questionnaire to States to assess the needs and any possible ways in which those needs could be addressed."

2. **Mr. Hughes** (United States of America) suggested that in paragraph 2, the words "a purely" should be changed to: "more properly viewed as an" since it had already been stated that the topic was at the intersection of intellectual property and contract law; in paragraph 3, the words "had every reason to have confidence" should be changed to "was confident" and that in paragraph 5, the words "those who rely on the licensing of intellectual property in their own commercial practices, and" should be added after the words "the private sector, including".

3. *The oral report on intellectual property licensing, as amended, was adopted.*

Finalization and adoption of a revised version of the UNCITRAL Arbitration Rules (*continued*)
(A/CN.9/XLIII/CRP.1/Add.5)

4. **Mr. Sorieul** (Secretary of the Commission) said that since the adoption of the decision reproduced in section C, paragraph 1 of the addendum to the draft report (A/CN.9/XLIII/CRP.1/Add.5), it had been pointed out that it would be worth drawing attention to the value of the UNCITRAL Arbitration Rules in the context of activities for the promotion of the rule of law. To that end, a new preambular paragraph could be added after the fourth preambular paragraph which would read: "*Mindful* of the significant contribution of the UNCITRAL Arbitration Rules in the strengthening of the rule of law in international commercial relations as well as in certain relations involving States" and, at the end of the seventh preambular paragraph, the following words could be added: "and to the continuous strengthening of the rule of law".

5. **Mr. Bellenger** (France) said that his delegation had had the impression that delegations had some hesitations about the idea of the Working Group taking up the issues referred to in part I, paragraph 5; he therefore proposed that the words: "should also undertake" should be amended to read: "could consider undertaking". His delegation was not in favour of referring in the draft decision to the strengthening of the rule of law since that issue was related more closely to domestic law.

6. **Mr. Tosato** (Italy) said that his delegation felt that the draft report should reflect the content of the discussion that had taken place; it was therefore surprised that amendments were being proposed that appeared to concern the substance of the discussion.

7. **Mr. Chan** (Singapore) suggested that consideration of the report should be deferred until the end of the following week so as to allow time for consultations. His delegation strongly disagreed with the comment by the representative of France about the rule of law which, it believed, was even more applicable to inter-State relations than domestic law since otherwise might would prevail over right and the strong over the weak.

8. **The Chairperson** said that, in view of the fact that document A/CN.9/XLIII/CRP.1/Add.5 had only just been issued, the Commission would defer consideration of it until the following week.

The meeting rose at 4.05 p.m.